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MR. WEBSTER'S SPEECH,

In U. S. Senate, May 18, 1840, *on the proposed amendment to the Bankrupt Bill.*

I feel a deep and anxious concern for the success of this bill, and, in rising to address the Senate, my only motive is a sincere desire to answer objections which have been made to it, so far as I may be able, and to urge the necessity and importance of its passage. Fortunately, it is a subject which does not connect itself with any of the party contests of the day, and although it would not become me to admonish others, yet I have prescribed it as a rule to myself, that, in attempting to forward the measure, and to bring it to a successful termination, I shall seek no party ends, no party influence, no party advancement. The subject, so for as I am concerned, shall be sacred from the intrusion of all such objects and purposes. I wish to treat this occasion, and this highly important question, as a green spot, in the midst of the fiery deserts of party strife, on which all may meet harmoniously and amicably hold common counsel for the common good.

The power of Congress over the subject of bankruptcies—the most useful mode of exercising the power under the present circumstances of the country—and the duty of exercising it—are the points to which attention is naturally called by every one who addresses the Senate.

In the first place, as to the power. It is fortunately not an inferred or constructive power, but one of the express grants of the Constitution. "Congress shall have power to establish uniform laws on the subject of bankruptcies throughout the United States." These are the words of the grant; there may be questions about the extent of the power, but there can be none of its existence.

The bill which has been reported by the committee, provides for voluntary bankruptcies only. It contains no provisions by which creditors, on an alleged act of bankruptcy, may proceed against their debtors, with a view to subject them and their property to the operation of the law. It looks to no coercion by a creditor to make his debtor a subject of the law against his will. This is the first charateristic of the bill, and in this respect it certainly differs from the former bankrupt law of the United States, and from the English bankrupt laws.

The bill too extends its provisions not only to those who either in fact or in contemplation of law are traders, but to all persons who declare themselves insolvent, or unable to pay their debts and meet their engagements, and who desire to assign their property for the benefit of their creditors. In this respect, also, it differs from the former law, and from the law of England.

The questions, then, are two: 1st. Can Congress constitutionally pass a bankrupt law which shall include other persons besides traders? 2d. Can it pass a law providing for voluntary cases only; that is, cases in which the proceedings originate only with the debtor himself?

The consideration of both these questions is necessarily involved in the discussion of the present bill, inasmuch as it has been denied that congress has power to extend bankrupt laws further than to merchants and traders, or to make them for voluntary cases only. This limitation in the power of congress is asserted on the idea, that the framers of the Constitution in conferring the power of establishing bankrupt laws, must be presumed to have had reference to the bankrupt laws of England, as then existing; and that the laws of England, then existing embraced none but merchants and traders, and provided only for involuntary, or coercive bankruptcies.

Now, sir, in the first place, allow me to remark, that the power is granted to Congress in the most general and comprehensive terms. It has one limitation only, which is, that laws on the subject of bankruptcies shall be uniform throughout the United States.—With this qualification, the whole subject is placed in the discretion and under the legislation of Congress. The Constitution does not say that Congress shall have power to pass a bankrupt law, nor to introduce the system of bankruptcy. It declares that Congress shall have power to *establish uniform laws on the subject of bankruptcies throughout the United States.*" This is the whole clause, nor is there any limitation or restriction imposed by any other clause.

What, then, is "the subject of bankruptcies?" or, in other words, what are "bankruptcies?" It is to be remembered that the constitution grants the power to Congress by particular or specific enumeration; and, in making this enumeration, it mentions bankruptcies as a head of legislation, or as one of the subjects over which Congress is to possess authority. Bankruptcies are the subject, and the word is most certainly to be taken in its common and popular sense; in that sense in which the people may be supposed to have understood it, when they ratified the constitution. And I may remark that it is always a little dangerous, in construing the constitution, to search for the opinions or understanding of members of the convention in any other sources than the constitution itself, because the constitution owes its whole force and authority to its ratification by the people, and the people judged of it by the meaning most apparent on its face. How particular members may have understood its provisions, if it could be ascertained, would not be conclusive. The question would still be, how did the people understand it? And this can be decided only by giving their usual acception to all words not evidently used in a technical sense, and by inquiring, in any case, what was the interpretation or exposition presented to the people when the subject was under consideration.

Bankruptcies, in the general use and acceptation of the term, mean no more than failures. A bankruptcy is a fact. It is an occurrence in the life and fortunes of an individual. When a man cannot pay his debts, we say he has become bankrupt, or has failed. Bankruptcy is not merely the condition of a man who is insolvent, and on whom a bankrupt law is already acting. This would be quite too technical an interpretation. According to this, there could never be bankrupt laws, because every law, if this were the meaning, would suppose the existence of a previous law. Whenever a man's means are insufficient to meet his engagements and pay his debts, the fact of bankruptcy has taken place: a case of bankruptcy has arisen, whether there be a law providing for it or not.

There may be bankruptcies, or cases of bankruptcy, where there are no bankrupt laws existing. Or bankrupt laws may exist, which shall extend to some bankruptcies or some cases of bankruptcy, and not to others. We constantly speak of bankruptcies happening among individuals without reference to existing laws. Bankruptcies, as facts, or occurrences, or cases, for which congress is authorized to make provisions, are failures. A learned judge has said that law on the subject of bankruptcies, in the sense of the constitution, is a law making provision for cases of persons failing to pay their debts. Over the whole subject of these bankruptcies or these failures, the power of Congress, as it stands on the face of the Constitution, is full and complete.

And now let us see how it is that this broad and general power is, or can be, limited by a supposed reference to the English system. The argument is this: that members of the convention, in conferring the power on congress, must be supposed to have had reference to the bankrupt laws of England; and the bankrupt laws of England, as then existing, embraced only merchants and traders, and were only applied to debtors at the instance of their creditors; therefore, the inference is said to be, that traders only should be regarded as subjects of any bankrupt law to be passed by congress, and that no such law should give the debtor himself a right to become bankrupt, at his own request; or, at least, that every such law should give a right to the creditor to proceed against his debtor. But is this the just analogy? Is this the point of view in which a general resemblance of our system and the English system may be supposed to have been contemplated? Clearly not, in my opinion. Let it be admitted that the framers of the constitution looked to England for a general example;—they must be supposed nevertheless, to have looked to the power of Parliament, and not to the particular mode in which that power had been exercised, or the particular law then actually existing. The true analogy is, as it seems to me, between power and power: the power of parliament, and the power of congress; and not between the power of congress and any actually existing British statute, which might be, perhaps, in many respects, quite unsuitable to our condition.

The members of the convention did not study the British statutes, nor examine judicial decisions, to ascertain the precise nature of the actually existing system of bankruptcy in England. Still less did the people of the U. States trouble themselves with such inquiries. All saw that parliament possessed and exercised a power of passing bankrupt laws, and of altering and amending them, from time to time, according to its own discretion, and the necessities of the case.—This power they intended to confer on congress, as largely, for aught that appears, as they saw it held by parliament. The early British statutes were not confined to traders; later statutes were so confined; and, more recently, again, changes have been made, which bring in very numerous classes of persons who were not esteemed traders, in England, at the time of the adoption of the constitution of the United States. I may add, that bankrupt laws, properly so called, or laws providing for the *sessio bonorum*, on the continent of Europe, and in Scotland, were never confined to traders; and while the members of the convention may be supposed to have looked to the example of England, it is by no means improbable that they contemplated also the examples and institutions of other countries. There is no reason to suppose that it was intended to tie up the hands of congress to the establishment of that particular bankrupt system which existed in England in 1789; and to deny to it all power of future modification and amendment; it would be just as reasonable to say that the United States laws of copy-right, of patents for inventions, and many others, could only be mere transcripts of such British statutes on the same subjects, as existed in 1789.

The great object was to authorize Congress to establish a uniform system throughout all the States. No State could of itself establish such a system; it could only establish a system for itself; and the diversities, inconsistencies, and interferencies of the several State systems had been subjects of much well-grounded complaint. It was intended to give Congress the power to establish uniformity in this respect; and if the English example was regarded, it was regarded in its general character, of a power in Parliament to pass laws on the subject, to repeal them, and pass others, in its discretion, and to deal with the whole subject, from time to time, as experience or the exigencies of the public should suggest or require. The bankrupt system of England, as it existed in 1789, was not the same which had previously existed, nor the same which afterwards existed, or that which now exists. At first, the system was coercive, and the law a sort of criminal law, extending to all persons, as well as traders.—But changes had taken place before 1789, and other changes, and very important chnges, have taken place since. The system is now greatly simplified and improved, and it is also made much more extensive, as to those whom it embraces. It is hardly too much to say that it is preposterous to contend, that we are to refuse to ourselves not only the light of our own experience, and all regard to our own peculiar situation, but that we are also to exclude from our regard and notice all modern English improvements, and confine ourselves to the English bankrupt laws as they existed in 1789. The power of Congress is given in the fullest manner, and by the largest and most comprehensive terms and forms of expression; and it cannot be limited by vague presumptions of a reference to other existing codes, or loose conjectures about the intents of its framers, nowhere expressed or intimated in the instrument itself, or any contemporaneous exposition.

I think, then, that Congress may pass a law which shall include persons not traders, and which shall include voluntary cases only. And I think further, that the amendment proposed by the honorable member from New Jersey is, in effect, exactly against his own argument. I think it admits all that he contends against. In the first place, he admits voluntary bankruptcies, and there were none such in England in 1789. This is clear.—And in the next place, he admits any one who will say that he has been concerned in trade, and he maintains, and has asserted, that in this country any body may say that. Any body, then, may come in under the bill. The only difference is, he must come in under a disguise, or in an assumed character. Whatever be his employment, occupation, or pursuits, he must come in as a trader, or as one who has been engaged in trade.—The honorable member attempts a distinction between traders and those who can say that they have been engaged in trade. I cannot see the difference. It is too fine for me. A trader is one concerned in trade, and to be concerned in trade is to be a trader. What is the difference? But if persons may be concerned in trade, and yet not be traders, still such persons were not embraced in the English statutes, which apply to traders by names; and, therefore, the gentleman's bill would embrace persons not within those statutes as they stood in 1789.

The gentleman's real object is, not to confine the bill to traders, but to embrace every body; and yet he deems if necessary for every person applying to state, and to swear, that he has been engaged in trade. This seems to me to be both superfluous and objectionable; superfluous, because if we have a right to bring in persons under one name, we may bring in the same persons under another name, or by a general description; objectionable, because, it requires men to state what may very much resemble a falsehood, and to make oath to it. Suppose a farmer or mechanic to fail, can he take an oath that he has been engaged in trade? If the objection to bring in others than traders is well founded in the Constitution, surely mere form cannot remove it. Words cannot alter things. The Constitution says nothing about traders. Yet the honorable gentleman's amendment requires all applicants to declare themselves traders and, if they will but say so, and swear so, it shall be so received, and no body shall contradict it.—In other words, a fiction, not very innocent, shall be allowed to overcome a constitutional objection. The gentleman has been misled by a false analogy. He has adopted an example which does not apply to the case, and which he yet does not follow out. The British statutes are confined to traders, but then they contain a long list of persons who it is declared shall be deemed and taken to be traders within the acts. This list they extend, from time to time; and whenever any one within it becomes a voluntary bankrupt he avers, in substance, that he is a trader within the act of Parliament. If it had been necessary, as it is not, to follow this example at all, the gentleman's bill should have declared all persons traders, for the purpose of this act, and then every body could have made the declaration without impropriety, as in England, the applicant only states that which the law has made true. He declares himself a trader, because the law has already declared that he shall be considered a trader. His conscience, therefore, is protected. He swears only according to the act of Parliament, if he swear at all. But as the provision stands here, it calls on every one to declare himself a trader, or that he has been engaged in trade, not within the particular meaning or sense of any act of Congress, but in the usual and popular acceptation of the word.

Suppose, sir, a cotton planter, by inevitable misfortune, by fire or flood, or by mortal epidemics among his hands, is ruined in his affairs. Suppose he desires to make a surrender of his property and be discharged from his debts. He will be told, you cannot have the benefit of the law as a cotton planter; it is made only for traders, or persons engaged in trade. Are you not a trader? No. I am not a trader, and was never engaged in trade. I bought my land here, bought my hands from Caroliana, have bought stock from Kentucky, and raised cotton and sold it. But I never bought an article to sell again. I am no trader. But you must swear that you have been engaged in trade; you must apply, not as John Jones, Esq., cotton planter, on the Red river, but as Mr. John Jones, trader, at his store house, at or near the plantation of John Jones Esq. And so, sir, John Jones, the cotton planter, must either remain as he is, excluded from the provisions of the law, altogether, or sneak into them under a disingenuous disguise, if it be not something worse.

This attempt, therefore, sir, to avoid a supposed difficulty, encounters two decisive objections. In the first place, there is no difficulty to be avoided; in the second place, if there was, this manner of avoiding it would be mere evasion.

But now, sir, I come to a very important inquiry. The Constitution requires us to establish *uniform* laws on the subject of bankruptcy, if we establish any. Now what is this uniformity, or in what is it to consist? The honorable gentleman says that the meaning is that the law must give a coercive power to creditors as well as a voluntary power to debtors. That this is the Constitutional uniformity. I deny this altogether. No idea of uniformity arises from any such consideration. The uniformity which the Constitution requires is merely a uniformity throughout all the States. It is a local uniformity, and nothing more. The words are perfectly plain, and the sense cannot be doubted.—The authority is, to establish uniform laws on the subject of bankruptcies throughout the United States. Can any thing be clearer? To be uniform is to have one shape, one fashion, one form; and our bankrupt laws, if we pass them, are to have one shape, one fashion, and one form, in every State. If this be not so, what is the sense of the concluding words of the clause, "throughout the United States," My honorable friend from Kentucky, (Mr. Crittenden) has disposed of this whole question, if there ever could be a question about it, by asking the honorable gentleman from New Jersey, what *uniform* means in the very same clause of the Constitution, where the word is applied to rules of naturalization; and what it means in a previous clause, where it declares that all duties of impost shall be *uniform* throughout the United States.

It can hardly be necessary to discuss this point further. If it were, the whole history of the Constitution would show the object of the provision. Bankrupt laws were supposed to be closely connected with commercial regulations. They were considered to be laws nearly affecting the intercourse, trade, and dealing between citizens of different States; and for this reason it was thought wise to enable Congress to make them uniform.—The Constitution provided that there should be but one coinage, and but one power to fix the value of foreign coins. The legal medium of payment, therefore, in fulfilment of contracts, was to be ascertained and fixed, for all the States, by Congress, and by Congress alone; and Congress, and Congress alone, was to have the power of providing a uniform mode in which contracts might be discharged without payment. Look to the discussions of the times; to the expositions of the Constitution made to the People by its friends when they urged its adoption; look to all within the Constitution, and all without it; look any where or every where, and you will see one and the same purpose, one and the same meaning; and that meaning cannot be more clearly expressed than the words of the clause themselves express it—that laws to be established by Congress on the subject of bankruptcies *shall be uniform throughout the United States.*

Now, sir, the gentleman's bill is not uniform. It proposes that there may be one law in Massachusetts, and another in New Jersey. The gentleman's bill includes corporations; but then it gives each state a power to exempt its own corporations, or any of them, from the operation of the law, if it shall so choose. It decides which shall be, in the case of banks, an act of bankruptcy; but then it provides that any state may say, nevertheless, that in regard to its own banks, or any of them, this shall not be an act of bankruptcy.

Here is the provision:

"*Provided, however*, That nothing herein contained shall apply to, or in anywise affect any corporation or asociation of persons, incorporated or acting under a law of any state of the union, or any territory of the United States, where such corporation or association shall be authorized by their charter, or any express law of such state or territory, to do or commit the act herein declared to be an act of bankruptcy, or where, by any such law of any such state or territory, the said corporation or association of persons shall or may be exempted from the provisions of this act."

Pray, sir, what sort of uniformity is this? A uniformity which consists in the authorized multiplication of varieties. Who will undertake to defend legislation of this kind, under our power to establish uniform laws on the subject of bankruptcies throughout the United States? Not only is it in direct violation of the plain text of the constitution, but it lets in the very evils, every one of them, which the constitutional provision intended to shut out. The constitution says that congress may *establish* uniform laws; the gentleman's bill says that congress may propose a law, at least so far as corporations are concerned but that still each state may take what it likes, and reject the rest; and this he contends, is establishing a uniform law.

I pray, sir, where is this power of exemption to stop? If we may authorise states to exempt their corporations, may we not, with equal propriety, authorise them to exempt all their citizens? May we not say that each state may decide for itself whether it will have any thing to do with the law, when we have passed it, or what parts it will adopt, and what parts it will refuse to adopt?

But, sir, I must wait till some attempt is made to defend this part of the gentleman's bill. I must see some show of propriety, some plausibility, before I reason against it further. In the view I at present have of it, it appears to me utterly repugnant to the plain requirements of the constitution, destitute not only of all argument for its support, but of all apology also. I see nothing in it but naked unconstitutionality.

But, Mr. President, if these provisions were constitutional, they would still be in the highest degree unjust, inexpedient and inadmissible. What is the object of bringing the banks into the bill at all? Certainly there can be no just object, other than to ensure the constant and punctual discharge of their duties, by always paying their notes on presentment;—Clearly there can be no object but to prevent their suspensions of payment. And it might be said that this object was kept in view, if the law were uniform, peremptory, inflexible, and applying to all banks. But when you give the power of exemption to the states, you sanction the very evil which you propose to remedy.—You profess to prescribe a general rule, and yet authorise and justify its violation. Do not the states now exempt, and is not that the very evil from which we suffer? Is not suspension under the authority of State exemption, the topic, the discussion of which every day nearly stuns us by its reverberation from the walls of this chamber? The charters of the banks are, in general, well enough. They require punctual specie payments, under severe penalties, and, in some cases, under the penalty of forfeiture. But, under the pressure of circumstances, and from a real or supposed necessity, the states relieve the banks from these penalties, and forebear to enforce the forfeitures. And will they not, most assuredly, also relieve the banks in the same manner, and for the same reasons, if they have the power, from the penalties of our bankrupt law? State permission, state indulgence, state exemption, is the very ground on which suspension now stands, and on which it is justified. And it is now proposed that congress shall give its authority and sanction to all this.—It is proposed that congress shall solemnly recognise the principle, and approve and sanction the practice of state exemption, of the suspension of specie payments by state authority. If the states will not enforce their own laws against the banks, can any one imagine that they will see the equally or still more severe penalties of our bankrupt law enforced, while they have the power to prevent it?